

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MICHAEL DOPORTO,

Plaintiff,

v.

CV 10-0145 JCH/WPL

CHAN KIM, et al.,

Defendants.

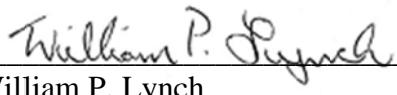
ORDER DENYING MOTION TO STRIKE

This matter is before me on Defendants Peter Honigmann and Joshua Baker's Motion to Strike Plaintiff's Response to Motion for Sanctions and Memorandum in Support Thereof. (Doc. 110.) On August 30, 2012, Defendants filed a motion for sanctions against Plaintiff's counsel Alexander Ching for his failure to attend a deposition scheduled on August 13, 2012. (Doc. 5.) By September 14, 2012, Ching had not filed a response, and Defendants filed a Notice of Briefing Complete. (Doc. 108.) Ching filed a response at 9:28 a.m. on September 18, 2012. (Doc. 109.)

Defendants argue that this response is untimely. However, their notice of briefing complete was likewise untimely, since parties have seventeen days, not fourteen days, to file a response brief to a motion. *See Fed. R. Civ. P. 6(d)* (granting three additional days when service is made electronically); D.N.M.LR-Civ. 7.4(d). Thus, Ching's brief was due September 17, 2012. While Ching's brief was still late, it was only by half a day. Since Defendants moved for sanctions against him, I will accept his response as timely filed in the interest of justice and deny the motion to strike. Despite my leniency in this matter, I will make note of his tardiness when

considering the merits of the motion for sanctions. I will give Defendants **ten days from the entry of this order** to withdraw their notice of briefing complete (Doc. 108), and file a reply brief to Ching's response.

IT IS SO ORDERED.



William P. Lynch
United States Magistrate Judge

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any *pro se*
party as they are shown on the Court's docket.